

Order

Michigan Supreme Court
Lansing, Michigan

December 23, 2019

Bridget M. McCormack,
Chief Justice

159352

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 159352
COA: 338183
Wayne CC: 16-002372-FC

MARVIN MASSEY,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the March 21, 2019 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court. The Court notes, however, to the extent that the sentencing court assigned zero points to Offense Variable (OV) 7, MCL 777.37, on the ground that judicial fact-finding was not permitted, the court erred as a matter of law. *People v Steanhouse*, 500 Mich 453, 466-467 (2017); *People v Lockridge*, 498 Mich 358, 364, 391-392, 392 n 28 (2015). To the extent that the sentencing court concluded that a preponderance of the evidence did not support assigning 50 points to OV 7, but that a departure was warranted based on the “egregious nature of th[e] heinous assault,” the court erred as a matter of law. MCL 769.34(3)(b). On remand, the sentencing judge shall determine whether zero points or 50 points are to be assigned to OV 7 and, as ordered by the Court of Appeals, shall either resentence defendant or articulate the reasons for any departure based on the applicable sentencing guidelines range.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 23, 2019

Clerk